

## **Real Property - Redemption Rights of Stranger to Record Title - Weiner v. Jobst, 22 Ill. 2d 11, 174 N.E. 2d 561 (1961)**

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### **Recommended Citation**

DePaul College of Law, *Real Property - Redemption Rights of Stranger to Record Title - Weiner v. Jobst*, 22 Ill. 2d 11, 174 N.E. 2d 561 (1961), 11 DePaul L. Rev. 141 (1961)

Available at: <https://via.library.depaul.edu/law-review/vol11/iss1/13>

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that the courts will continue to reject the alternative definitions in *Murdock* and instead adhere to the standard set forth in *Goodman* and *Palermo*, i.e., that a specific wrongful intent not to pay income taxes must be established.

### REAL PROPERTY—REDEMPTION RIGHTS OF STRANGER TO RECORD TITLE

Smith, highest bidder on certain real estate at a tax foreclosure sale and to whom a certificate of purchase was issued, petitioned the circuit court of Cook county to expunge the record of an attempted redemption by one Lyons, undisclosed agent for Western National Bank of Cicero as trustee, on the grounds that Lyons had no redeemable interest. The court granted the petition and entered an order finding that Smith was the purchaser at the tax sale and that Lyons had no interest entitling him to redeem. Western National Bank then made a motion to vacate the order. It attempted to show that it had actual title to the property through various mesne conveyances, and therefore had an interest which would entitle it to redeem. The circuit court denied the motion and an appeal was taken to the Supreme Court of Illinois<sup>1</sup> which held that Western National Bank was precluded from redeeming because one of the deeds in its chain of title was not recorded. *Weiner v. Jobst*, 22 Ill. 2d 11, 174 N.E. 2d 561 (1961).

An important part of real estate taxation is the body politic's authority to divest an owner of his property and sell it at a tax redemption sale.<sup>2</sup> The right of redemption from such sales is protected by the Illinois Constitution which provides:

The right of redemption from all sales of real estate, for the non-payment of taxes or special assessments of any character, whatever, shall exist in favor of owners and *persons interested* in such real estate, for a period of not less than two years from such sales thereof.<sup>3</sup>

Furthermore, Illinois redemption statutes repeatedly refer to the rights of "owners" and "persons interested" to redeem. Often these "persons interested" are referred to as "unknown owners."<sup>4</sup>

<sup>1</sup> Jurisdiction to the Supreme Court is invoked pursuant to ILL. REV. STAT. ch. 110, § 75 (1959) which provides in part that: "Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold . . . is involved. . . ."

<sup>2</sup> For an excellent discussion on the whole problem of state taxation and redemptions in Illinois see Corby, *Developments in Real Estate Taxation—1950–1960*, 10 DE PAUL L. REV. 596 (1961).

<sup>3</sup> ILL. CONST. art IX, § 5. (Emphasis added.)

<sup>4</sup> ILL. REV. STAT. ch. 120, §§ 697–752 (1959).

Illinois case law admits that a stranger to property, having neither legal nor equitable interest, has no right to redeem. *Conkey v. Rex*,<sup>5</sup> cited by the court in the *Weiner* case, involved a former owner who had conveyed the land by deed, and then attempted to redeem, claiming that the deed was a mortgage. The court held that the would-be redeemer had no interest either legal or equitable, and therefore had no right to redeem.

The rights of persons who have an interest in the land which is affected by the sale are also established. In *People v. Hess*,<sup>6</sup> the plaintiff, a purchaser at a tax foreclosure sale, filed a petition to set aside the redemption of one Goldstein who was the equitable owner of stock in a dissolved corporation with two other nominal stockholders. Twenty years prior to the tax sale, the corporation had gone into bankruptcy and was dissolved but failed to list this property as an asset in bankruptcy. The court nevertheless allowed Goldstein to redeem as an interested party even though his personal interest was not of record and held:

We think it clear that a complete stranger to property is given no right to redeem by either section 5 of article IX of the constitution, or the statute in the instant case. . . . *However, these constitutional and statutory provisions do not require complete legal title, but only an undefined "interest" in the real estate.*<sup>7</sup>

The courts have often repeated that a liberal interpretation should be given to tax redemptions and have expressed a strong favor to allow such redemptions,<sup>8</sup> and give "statutes authorizing redemption from tax sales a construction favorable to owners."<sup>9</sup> Therefore, it is of much interest that in the *Weiner* case, the Western National Bank, which admittedly had title to the property,<sup>10</sup> was considered to be neither an "owner" nor a "person interested" for the purposes of redemption.

The Supreme Court in the *Weiner* case first held that although Lyons did redeem within the statutory two-year period,<sup>11</sup> he personally did not

<sup>5</sup> 212 Ill. 444, 72 N.E. 370 (1904).

<sup>6</sup> 7 Ill.2d 192, 130 N.E.2d 280 (1955).

<sup>7</sup> *Id.* at 197, 130 N.E.2d 283. (Emphasis added.)

<sup>8</sup> *Skach v. Sykora*, 6 Ill.2d 215, 127 N.E.2d 453 (1955); *Mohr v. Sibthorp*, 395 Ill. 418, 69 N.E.2d 487 (1946); *Nudelman v. Carlson*, 375 Ill. 577, 32 N.E.2d 142 (1941); *Hruby v. Steinman*, 374 Ill. 465, 30 N.E.2d 7 (1940); *Crowder v. Scott State Bank of Bethany*, 365 Ill. 88, 5 N.E.2d 387 (1936); *Elmhurst State Bank v. Stone*, 346 Ill. 157, 178 N.E. 362 (1931).

<sup>9</sup> *Elmhurst State Bank v. Stone*, 346 Ill. 157, 162, 178 N.E. 362, 364 (1931).

<sup>10</sup> A deed though unrecorded nevertheless does pass title, *Lucas v. Westray*, 408 Ill. 243, 96 N.E.2d 623 (1951); *Naiburg v. Hendrickson*, 370 Ill. 502, 19 N.E.2d 348 (1939); *Williamson v. Williamson*, 306 Ill. 533, 138 N.E. 166 (1923).

<sup>11</sup> ILL. REV. STAT. ch. 120, § 734 (1959).

have a redeemable interest and his agency relationship was not established until the final order was entered after which no redemption may be made. The court, however, passed over this point and stated that a stranger to record title has no right to redeem. Repeatedly the court speaks of "good record title," and "chain of title"; therefore, it is clear that the unrecorded deed in Western National Bank's chain of title was the real basis of the decision. The effect of this decision is that the owner of the fee simple title to real property may not redeem because of this unrecorded deed, and that in order to redeem, the would-be redeemer's interest must be of record.<sup>12</sup> In addition, the court held that the highest bidder at a real estate tax sale is a purchaser who is to be protected against unrecorded interests by the Conveyance Act.<sup>13</sup> *McNitt v. Turner*,<sup>14</sup> upon which the majority in the *Weiner* case relied, is a United States Supreme Court case which interpreted an earlier Illinois recording statute.<sup>15</sup> The *McNitt* case, however, involved an action in ejectment brought over thirty years after the sale. In that case, defendant traced his deed to an administrator's sale to pay the debts of one Spotts, who died intestate; plaintiff traced his deed to one Lucas who purchased the land from Spotts prior to his death. Lucas' deed however, was not recorded until long after the deed from the administrator to the purchaser at the sale. The court then held that the term "purchasers" included purchasers at judicial sales. However, the plaintiff in the *McNitt* case did not claim his right to the property as a right of redemption from the sale. He claimed it under the deed made to him before the owner died and before the sale. The action, in fact, did not arise until long after the administrator's deed was delivered. The court in the *Weiner* case applied the rule in the *McNitt* case to a tax sale and considered Smith to be a purchaser at the time the certificate of purchase was issued to him. Having no knowledge of Western National Bank's interest because of the unrecorded deed, Smith is protected by the Conveyance Act. This seems to be the first time in which the Conveyance Act has been used to defeat a redemption of real estate. Previously, the act has only been used to protect subsequent bona fide purchasers of the real estate.

This decision extends the rights of the holder of the certificate of purchase. Courts have in the past often minimized these rights and have considered the holder of the certificate of purchase to have no title or vested interest, but merely the right to receive a deed if the premises are

<sup>12</sup> "Under the applicable constitutional and statutory provisions, a stranger to record title has no right to redeem." *Weiner v. Jobst*, 22 Ill.2d 11, 15, 174 N.E.2d 561, 563 (1961).

<sup>13</sup> ILL. REV. STAT. ch. 30, § 30 (1959).

<sup>14</sup> 83 U.S. 352 (1872).

<sup>15</sup> Ill. Laws 1845, at 108.

not redeemed.<sup>16</sup> The certificate in itself does not convey title to the purchaser, and on this basis it is difficult to understand why the purchaser should be protected against unrecorded interests.

The dissent as expressed by Chief Justice Schaefer points out that the result of the holding is that there is no one who can redeem from the tax sale involved in this litigation. The Chief Justice also mentions what he considers to be the unsoundness of the proposition set forth that redemption can only be effected by those whose interests were actually or constructively known to the purchaser at the time of the tax sale.

Future decisions will have to clarify just how far recording of a deed is a *sine qua non* of redemption. Would, for example, one who acquired title to property by adverse possession but whose interest was not recorded or known to the purchaser at the time of the tax sale be allowed to redeem? The statutes hold that "persons interested" and "unknown owners" may redeem. It must be left to future cases to determine how there can be rights of "unknown owners" if it is required that their interest be recorded in order to have any effect as against the purchaser at the tax sale.

<sup>16</sup> Chicago Title & Trust Co. v. Wabash Randolph Corp., 388 Ill. 376, 57 N.E.2d 881 (1944).

### SCAFFOLD ACT—CONTROL OF CONSTRUCTION AS A REQUISITE OF LIABILITY

John Gannon, the plaintiff, was employed by an independent contractor as a bricklayer. The contractor was engaged in rebuilding a freight dock pursuant to a contract entered into with the defendant-owner. All construction, including scaffold erection, was done by the contractor. Although the defendant's architects made frequent inspections of the building activity to see that the work conformed to specifications prepared by them, they neither inspected the scaffold erection nor exercised control over the manner in which the work was done. In the course of his employment, the plaintiff ascended a ladder which was in place against a portion of scaffolding. As he was about to step onto the scaffold, the ladder slipped out from under him causing him to fall to the floor. No employee of the defendant was present at the scene when the accident occurred; further, there was no evidence of any defect in the scaffold or ladder other than the fact that the ladder was not nailed to the scaffold as was customary in the trade. Suit was brought by the plaintiff, under the civil liability provisions of the Structural Work Act, to recover damages from the defendant-owner for personal injuries sustained as a result of his fall. A judgment for the plaintiff was subsequently reversed